made a complete new start at the beginning of the nineteenth century. American judges then did their share in working out conceptions that are now received among English-speaking peoples. They helped to incorporate the law merchant in the common law. Kent and Story helped to develop and systematize equity while Eldon was still chancellor. In 1850, while the English cases were still going on the forms of action, Chief Justice Shaw worked out the modern doctrine as to negligence in advance of the common-law world and in enduring fashion. The achievements of the classical period of American law, the period of the great appointive state courts prior to the Civil War, will stand with those of any period of growth and adjustment in legal history. The courts of to-day, with abundant experience at hand in the reports, with an apparatus of organized legal knowledge easily accessible, are externally much better equipped to meet problems that are relatively no more difficult. If they do not meet them adequately, may we not with good reason inquire as to the men behind the machinery? This is no place to argue the point. It is enough to say that if no one but a lawyer is competent to treat it, no one but a lawyer is competent to complacently wave it aside. And as to the voucher of *Borgnis* v. *Falk*, 147 Wis. 377, one might suggest a comparison with *State* v. *Kreutzberg*, 114 Wis. 530, 537, and *Nunemacher* v. *State*, 129 Wis. 190, 198–203, and a query whether the moral of these decisions may not be Mr. Dooley's proposition that "The Supreme Coort follows th' iliction rethurns." Some recent opinions in North Dakota and the marked increase in opinions written for the newspaper rather than for the law report since the advent of the direct primary, might also be studied profitably in this connection.

It is not fair to Dr. Carpenter, who has done his work well from the political side, to hold him too rigidly for an incidental incursion into strictly legal history. And yet this inability of the student of politics apart from law to appreciate the most significant of his materials deserves to be emphasized quite as much as the inability of the lawyer *simpliciter* to use valuable materials for his purpose, of which we have heard so much.

ROSCOE POUND.

STATE OF CONNECTICUT: FOURTH REPORT OF THE BOARD OF COMPENSATION COMMISSIONERS FOR THE YEARS 1917 AND 1918. Hartford. 1918. pp. 34.

The recognition of industrial accidents as a legitimate part of the expense of industry brings many things in its train: a new relation between employer and employed, care for the safety of the workman; and as that proves to be rather profitable, care of his general health as well, and of his social welfare. This report shows part of the process. In a state having more than half a million workmen, with over twenty thousand accidents coming under the act (nearly 95 per cent of which were amicably settled), voluntary aid was given by the employers in about three-quarters of a million accidents. Nearly two million dollars were paid out in compensations; but three-fourths as much was paid in medical or surgical aid, in cases where no compensation was due. One-half of all the employers reporting on the subject had an emergency hospital at the place of employment; almost every large plant furnished first aid; about seventy nurses were reported as in constant attendance. These facilities would hardly have been furnished in such large measure unless they paid; they minimized accidents, prevented infection, and kept the employees at work.

This report does not show the great extent of other similar agencies. What is broadly called "welfare work," preventive work, not curative, is widely employed in the industries today; and it pays. The weakest part of the workmen's compensation acts is the employment of the unfortunate word "accident," or whatever phrase takes its place. If an industrial accident is part of the cost of industry, so surely is an industrial disease. The Connecticut Commissioners

make use of their interesting power to recommend legislation by proposing an amendment on this point. Their draft provides for compensation "though the injury cannot be traced to a definite occurrence which can be located in time and place; nor shall it be a defense that it is, either in whole or in part, a disease." This amendment seems to be an excellent piece of drafting.

The Report as a whole may be commended as a sensible business-like presentation of the work of a great industrial instrumentality.

J. H. B.

WATER: FRENCH LAW AND COMMON LAW. A Reprint from Volume VI of the CALIFORNIA LAW REVIEW. By Samuel C. Wiel of the San Francisco Bar.

In this little book Mr. Wiel makes another real contribution to the law of waters. His "Water Rights in the Western States," now in its third edition, and which deals with the riparian and with the appropriation systems of water law is one of the masterpieces of American legal literature.

In the present book of fifty-two pages, the subject of this review, Mr. Wiel discusses the origin of the riparian doctrine as that doctrine exists in the common law of America and of England, and also makes a comparison between the riparian doctrine of the common law and the riparian doctrine of the French Civil Code.

The essence of the riparian doctrine is the principle that the riparian proprietors along a stream have an equal right to make reasonable use of the waters of the stream. Mr. Wiel's conclusion as to the origin of the riparian doctrine will prove rather startling to American and English lawyers and jurists. With evidence apparently convincing, he shows that the doctrine referred to, as known to American common law, came not, as is usually supposed, from England, but from the French Civil Code, having been introduced into American law by Story and by Kent, and that instead of England having passed the doctrine to America it was passed by America to England. The doctrine, according to Mr. Wiel, was not known to the Roman law, and was not formulated with definiteness in the French civil law until the appearance of the French or Napoleonic Code. A principle which is to be found in the Roman law, and in the French civil law, and in the law of the riparian system of England, and in that of the riparian and appropriation systems of America, is the one to the effect that a water right in respect to a running stream is not a right in the *corpus* of the water itself while in the stream, but simply a right to make use of the water of the stream. This principle, however, is not to be confused with the riparian doctrine, for it is common to the riparian and to the appropriation systems, the underlying fundamental principles of which are, respectively, equality for the one and discrimination in favor of the first user for the other.

After having traced the riparian doctrine from the English common law back into the American common law, and then on back into the law of the French Civil Code, Mr. Wiel compares various features of the riparian doctrine or system obtaining in America with features existing in the French civil law under the code, with the result that he finds them substantially the same. Thus, they are found to be alike in the following, among other, particulars: use of the water is confined to lands that are riparians; use does not create the water right and nonuse does not extinguish it, for the right exists by virtue of the riparian nature of the land; the right of one riparian proprietor against another is that of equality, not equality in the amount of water used, but in the right to make a reasonable use; excessive use — in other words, the use of an amount of water over and above the amount which equality of right makes reasonable — is unlawful; a riparian, as against himself, may part with his water right to a nonriparian, but not as against other riparians; riparians